IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 258 OF 1997

Ashok Santaram Bhasme ..Appellant

versus

N. N. Ghadage & ors. ..Respondents

Mr. M. A. Patil for the Appellant.

Mr. Dilip Mahadik h/f. S.R. Singh for the Respondents No.3.

CORAM : D. G. DESHPANDE,J.

DATE : 31ST JANUARY,2005

ORAL ORDER. :

1. Heard learned counsel for the parties.

2. The Appellant who was the Sub Divisional Officer in Telecommunication Department at Sangola, suffered an accident resulting in 20% permanent partial disability i.e. there was a fracture to his lower end of the right leg. He filed Claim petition which was allowed to the extent of Rs.22,475/- inclusive of Rs.12,000/- (under no fault liability). This Appeal is for enhancdment.

3. Learned counsel for the respondent No.3

relied upon the judgment of this Court reported in **1990 ACJ 465 Ebrahim Fakir Ansari vs. Sitaram Kamalaksha Kamat and Anr.** wherein it is held that if the injury has not affected the earning capacity of the person then the compensation will have to be determined only for the temporary disablement. In this case the applicant who was the Sub Divisional Officer got promotion after the accident, his earning capacity is not definitely affected. For medical expenses he has been paid properly. He has got reimbursement of Rs.2,000/- from his Department. He was on leave for about six months, out of which, he got only two months special leave salary from his department.

4. In the case, referred to above, the Court has observed that **"....For instance, a minor injury in the leg may be vital for a football or a hockey player, for an engineer or a mechanic or a driver. It may not be so for an officer who does table work. .....For the nature of work that the applicant is doing or he is likely to do after retirement, whether such a disability would really affect, or can affect his earning capacity is very doubtful."** Same is the case here. Even from the evidence of the appellant injury which he suffered was to the right leg. He was in hospital for nine days. He got only two months special pay from his Department

but for about six months he was on leave.

5. Looking to the aforesaid fact that the appellant was on leave for six months, out of which only two months special leave was sanctioned to him, the compensation can be nominally enhanced. Therefore appeal is partly allowed. The appellant will be entitled to get Rs.5,000/- (Rupees Five Thousand) more from the respondents without interest. Appeal disposed of accordingly, No order as to costs.

31.1.2005 (D.G. DESHPANDE,J.)